

West Bank Homeowners Association v. Riverisde County Sheriff

Excerpt regarding PL280 and Cal Penal Code 418

GENERAL ALLEGATIONS

14. Public Law 280, codified at 18 U.S.C. 1162, gave criminal jurisdiction to California over any and all reservation land in California. From inception, California was designated as a “mandatory state” whereby its criminal jurisdiction over offenses by or against Indians immediately supplanted American Indian Country jurisdiction. It provides California’s criminal laws “shall have the same force and effect within such Indian Country as they have elsewhere within the State or territory.” In fact, Public Law 280, as originally introduced, was only concerned with law enforcement problems in the State of California. [See RESP NO. 83699, at 1-6 as originally presented as H.R. 1063) which provided for “California alone to extend its criminal laws over Indian Country and have jurisdiction over civil disputes in Indian Country.” Later, other states were added.] The term “Indian Country” is a defined term as codified by U.S.C. 1151 and includes all land within the limits of Indian reservations under the jurisdiction of the United States Government, as well as all other dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, as well as all Indian allotments. By such statute, criminal law jurisdiction over the matters at issue vests exclusively with the state of California and its enforcement vests exclusively with California officials and those empowered to enforce its criminal statutes. Whether or not the West Bank Land is or is not reservation land, California criminal statutes apply and all persons located or occupying such land, including Plaintiff’s members, are entitled to protection under California’s criminal statutes. This action need not and does not seek to adjudicate the issue of whether the West Bank is reservation land. It matters not, one way or the other.

15. Defendants have admitted and affirmed that “The Sheriff has the responsibility of enforcing state criminal prohibitory statutes on tribal lands in the state of California.” This statement of position which is accurate as a matter of law is set forth in a July 28, 2010, letter of

Chief Deputy Rodney Vigue sent to Attorney Thomas S. Slovak, in response to a request for assistance from the Sheriff's Department to prevent crimes and to cause the Sheriff's Department to prevent the taking of private property contrary to California criminal law. A copy this letter is attached as Exhibit "D" to the Declaration of Thomas S. Slovak which is attached to this Complaint and incorporated herein by this reference.

16. *California Penal Code* § 418 provides as follows:
"Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor."

17. California Penal Code § 418 merely represents the most current manifestation, through criminal law statutes, of the most fundamental policy of protection of individual rights in the United States of America; that is, persons are to be free of governmental intrusion and otherwise be secure in their homes. Such protections are the most basic of freedoms upon which the United States was founded. Such principles are the basis then for requirements that they may not be taken through governmental action as alleged herein. Such principles are central to the public policies of not only the United States, but the State of California. Such restrictions are further grounded in the United States Constitution whereby all citizens are entitled to equal protection under the law. With the adoption of the Fourteenth Amendment, Defendants in their capacities as representatives of the State cannot, may not, and shall not institute such policies and practices and otherwise allow and participate in the violation of Plaintiff's constitutional rights as alleged herein. Defendants cannot stand aside and assist, as is occurring, and otherwise allow others to so deprive Plaintiff's members of such liberties and rights, on any ground, much less the pretext now occurring. Nothing in common law, federal law, state law, or under any standard of equity or justice exists to condone what Defendants are now doing.

18. Article 1, Section 1 of the California Constitution confirms that all people have inalienable rights including “enjoying and defending life and liberty, acquiring , possessing, and protecting , property , and pursuing and obtaining safety, happiness, and privacy.” Article 1 Section 7(a) of the California Constitution provides that, “A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. . . .”

These provisions of California’s Constitution, as well as others, confirm then that restrictions against self help without due process of law reflect the most fundamental of California’s public policy. These fundamental public policies are reflected in Penal Code § 418. Accordingly, the criminal prohibitions in California against self help and prohibition against evictions of residences without due process of law and court order are prohibitory and enforceable everywhere in California, including the West Bank Land and regardless of whether it is or is not reservation property.